

The House Committee on Judiciary Non-Civil offers the following substitute to SB 9:

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Title 16 of the Official Code of Georgia Annotated, relating to crimes and
2 offenses, so as to revise the crime of sexual assault by persons with supervisory or
3 disciplinary authority; to provide for degrees of the crime; to change provisions relating to
4 punishment; to prohibit sexual extortion; to provide for elements of the crime; to provide for
5 an exemption; to provide for penalties; to provide for venue; to amend Code
6 Sections 17-10-6.2, 35-3-37, 42-1-12, 42-5-56, and 49-2-14.1 of the Official Code of Georgia
7 Annotated, relating to punishment for sexual offenders, review of individual's criminal
8 history record information, definitions, privacy considerations, written application requesting
9 review, and inspection, the State Sexual Offender Registry, immunity from liability of
10 department, agency, or child advocacy center, and records check requirement for licensing
11 certain facilities, respectively, so as to make conforming and correct cross-references; to
12 revise and provide for definitions; to provide for effective dates; to provide for related
13 matters; to repeal conflicting laws; and for other purposes.

14 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

15 **SECTION 1.**

16 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is
17 amended by revising Code Section 16-6-5.1, relating to sexual assault by persons with
18 supervisory or disciplinary authority, sexual assault by practitioner of psychotherapy against
19 patient, consent not a defense, and penalty upon conviction for sexual assault, as follows:
20 "16-6-5.1.

21 (a) As used in this Code section, the term:

22 (1) ~~'Actor' means a person accused of sexual assault.~~

23 (1) 'Agent' means an individual authorized to act on behalf of another, with or without
24 compensation.

25 (2) 'Child welfare and youth services' shall have the same meaning as set forth in Code
26 Section 49-5-3.

27 (3) 'Disability' shall have the same meaning as set forth in Code Section 37-1-1.

28 (4) 'Employee' means an individual who works for salary, wages, or other remuneration
29 for an employer.

30 (2)(5) 'Intimate parts' means the tongue, genital area, groin, inner thighs, buttocks, or
31 breasts of a person.

32 (3)(6) 'Psychotherapy' means the professional treatment or counseling of a mental or
33 emotional illness, symptom, or condition.

34 (7) 'School' means any educational institution, public or private, providing elementary
35 or secondary education to children at any level, kindergarten through twelfth grade, or
36 the equivalent thereof if grade divisions are not used, including extracurricular programs
37 of such institution.

38 (8) 'Sensitive care facility' means any facility licensed or required to be licensed under
39 Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is required to be licensed pursuant to
40 Code Section 31-7-151 or 31-7-173.

41 (4)(9) 'Sexual contact' means any contact between the actor and a person not married to
42 the actor involving the intimate parts of either person for the purpose of sexual
43 gratification of the actor either person.

44 (5) 'School' means any educational program or institution instructing children at any
45 level, pre-kindergarten through twelfth grade, or the equivalent thereof if grade divisions
46 are not used.

47 (10) 'Sexually explicit conduct' shall have the same meaning as set forth in Code
48 Section 16-12-100.

49 (b) A person who has supervisory or disciplinary authority over another individual
50 commits sexual assault when that person An employee or agent commits the offense of
51 improper sexual contact by employee or agent in the first degree when such employee or
52 agent knowingly engages in sexually explicit conduct with another person whom such
53 employee or agent knows or reasonably should have known is contemporaneously:

54 (1) Is a teacher, principal, assistant principal, or other administrator of any school and
55 engages in sexual contact with such other individual who the actor knew or should have
56 known is enrolled Enrolled as a student at the same a school; provided, however, that
57 such contact shall not be prohibited when the actor is married to such other individual of
58 which he or she is an employee or agent;

59 (2) Is an employee or agent of any community supervision office, county juvenile
60 probation office, Department of Juvenile Justice juvenile probation office, or probation
61 office under Article 6 of Chapter 8 of Title 42 and engages in sexual contact with such
62 other individual who the actor knew or should have known is a probationer or parolee
63 under the supervision of any such office Under probation, parole, accountability court,

64 or pretrial diversion supervision of the office or court of which he or she is an employee
65 or agent;

66 (3) ~~Is an employee or agent of a law enforcement agency and engages in sexual contact~~
67 ~~with such other individual who the actor knew or should have known is being Being~~
68 ~~detained by or is in the custody of any law enforcement agency of which he or she is an~~
69 employee or agent;

70 (4) ~~Is an employee or agent of a hospital and engages in sexual contact with such other~~
71 ~~individual who the actor knew or should have known is a patient or is being detained in~~
72 ~~the same hospital A patient in or at a hospital of which he or she is an employee or agent;~~
73 or

74 (5) ~~Is an employee or agent In the custody of a correctional facility, juvenile detention~~
75 ~~facility, facility providing services to a person with a disability, as such term is defined~~
76 ~~in Code Section 37-1-1; or a facility providing child welfare and youth services, as such~~
77 ~~term is defined in Code Section 49-5-3, who engages in sexual contact with such other~~
78 ~~individual who the actor knew or should have known is in the custody of such facility of~~
79 which he or she is an employee or agent:-

80 (e)(6) ~~A person who is an actual or purported practitioner of psychotherapy commits~~
81 ~~sexual assault when he or she engages in sexual contact with another individual who the~~
82 ~~actor knew or should have known is the The subject of the actor's such employee or~~
83 ~~agent's actual or purported psychotherapy treatment or counseling or the actor uses the~~
84 ~~treatment or counseling relationship to facilitate sexual contact between the actor and~~
85 such individual; or:

86 (f)(7) ~~A person who is an employee, agent, or volunteer at any facility licensed or~~
87 ~~required to be licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is~~
88 ~~required to be licensed pursuant to Code Section 31-7-151 or 31-7-173 commits sexual~~
89 ~~assault when he or she engages in sexual contact with another individual who the actor~~
90 ~~knew or should have known had been admitted to or is receiving services from such~~
91 ~~facility or the actor Admitted for care at a sensitive care facility of which he or she is an~~
92 employee or agent.

93 (c) A person commits the offense of improper sexual contact by employee or agent in the
94 second degree when such employee or agent knowingly engages in sexual contact,
95 excluding sexually explicit conduct, with another person whom such employee or agent
96 knows or reasonably should have known is contemporaneously:

97 (1) Enrolled as a student at a school of which he or she is an employee or agent;
98 (2) Under probation, parole, accountability court, or pretrial diversion supervision of the
99 office or court of which he or she is an employee or agent;

100 (3) Being detained by or is in the custody of a law enforcement agency of which he or she
101 is an employee or agent;

102 (4) A patient in or at a hospital of which he or she is an employee or agent;

103 (5) In the custody of a correctional facility, juvenile detention facility, facility providing
104 services to a person with a disability, or facility providing child welfare and youth
105 services of which he or she is an employee or agent;

106 (6) The subject of such employee or agent's actual or purported psychotherapy treatment
107 or counseling; or

108 (7) Admitted for care at a sensitive care facility of which he or she is an employee or
109 agent.

110 (e)(d) Consent of the victim shall not be a defense to a prosecution under this Code
111 section.

112 (e) This Code section shall not apply to sexually explicit conduct or sexual contact
113 between individuals lawfully married to each other.

114 (f) A person convicted of improper sexual assault contact by employee or agent in the first
115 degree shall be punished by imprisonment for not less than one nor more than 25 years or
116 by a fine not to exceed \$50,000.00, or both, and shall, in addition, be subject to the
117 sentencing and punishment provisions of Code Section 17-10-6.2; provided, however, that:

118 (1) Except as provided in paragraph (2) of this subsection, any person convicted of the
119 offense of improper sexual assault of contact by employee or agent with a child under the
120 age of 16 years shall be punished by imprisonment for not less than 25 nor more than 50
121 years or a fine not to exceed \$100,000.00, or both, and shall, in addition, be subject to the
122 sentencing and punishment provisions of Code Section 17-10-6.2; and

123 (2) If at the time of the offense the victim of the offense is at least 14 years of age but
124 less than 16 years of age and the actor person is 18 years of age or younger and is no
125 more than four years 48 months older than the victim, such person shall be guilty of a
126 misdemeanor and shall not be subject to the sentencing and punishment provisions of
127 Code Section 17-10-6.2.

128 (g) A person convicted of improper sexual contact by employee or agent in the second
129 degree shall be punished as for a misdemeanor of a high and aggravated nature and shall
130 not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;
131 provided, however, that:

132 (1) Except as provided in paragraphs (2) and (3) of this subsection, any person convicted
133 of the offense of improper sexual contact by employee or agent in the second degree with
134 a child under the age of 16 years shall be punished by imprisonment for not less than five
135 nor more than 25 years or by a fine not to exceed \$25,000.00, or both, and shall, in

addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2;

(2) If at the time of the offense the victim of the offense is at least 14 years of age but less than 16 years of age and the person is 18 years of age or younger and is no more than 48 months older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2; and

(3) Except as provided in paragraph (2) of this subsection, upon a second or subsequent conviction of the offense of improper sexual contact by employee or agent in the second degree, the person shall be guilty of a felony and shall be punished by imprisonment for not less than one year nor more than five years and shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2."

SECTION 2.

Said title is further amended by adding a new Code section to read as follows:

"16-11-92.

(a) As used in this Code section, the term:

(1) 'Coerce' means:

(A) Exposing or threatening to expose any fact or information that if revealed would tend to subject an individual to hatred, contempt, ridicule, or economic harm;

(B) Exposing or threatening to expose any photograph or video depicting an individual in a state of nudity or engaged in sexually explicit conduct;

(C) Exposing or threatening to expose any fact or information that if revealed would tend to subject an individual to criminal proceedings or threatening to accuse any individual of a criminal offense:

(D) Threatening to take or withhold action as a public official or cause an official to take or withhold action; or

(E) Threatening to take or withhold action as an employer or cause an employer to take
or withhold action which would cause economic harm to an individual.

(2) 'Distribute' means to sell, lend, rent, lease, give, advertise, publish, exhibit

otherwise disseminate.

(3) 'Nudity' shall have the same meaning as set forth in Code Section 16-11-90.

(4) 'Sexually explicit conduct' shall have the same meaning as set forth in Code Section 16-12-100.

image that depicts any individual in a state of nudity or engaged in sexually explicit conduct.

(2) The provisions of this subsection shall not apply to the activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses.

(3) The provisions of this subsection shall not apply to requests for disclosures, production of documents or evidence, or similar discovery actions under the provisions of Chapter 11 of Title 9, the 'Georgia Civil Practice Act.'

(c) Any person that violates paragraph (1) of subsection (b) of this Code section shall:

(1) Upon the first offense, be guilty of and punished as for a misdemeanor of a high and aggravated nature; or

(2) Upon a second or subsequent offense, be guilty of a felony and upon conviction, be punished by imprisonment for not less than one year and not more than five years.

(d) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1

for any conduct made unlawful by this Code section in which the person engages while:

(1) Within or outside this state if, by such conduct, the person commits a violation of this Code section that involves an individual who resides within this state; or

(2) Within this state if, by such conduct, the person commits a violation of this Code

section that involves an individual who resides within or outside this state.

(e) Each violation of this Code section shall be considered a separate offense and shall not merge with any other offense."

SECTION 3.

Code Section 17-10-6.2 of the Official Code of Georgia Annotated, relating to punishment for sexual offenders, is amended by revising paragraph (7) of subsection (a) as follows:

"(7) Sexual assault against persons in custody, in violation of Improper sexual contact by employee or agent, as provided in Code Section 16-6-5.1;"

SECTION 4.

Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of individual's criminal history record information, definitions, privacy considerations, written application requesting review, and inspection, is amended by revising division (j)(4)(B)(iii) as follows:

"(iii) Sexual assault by persons with supervisory or disciplinary authority Improper sexual contact by employee or agent in violation of Code Section 16-6-5.1;"

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SECTION 5.

204 Code Section 42-1-12 of the Official Code of Georgia Annotated, relating to the State Sexual
205 Offender Registry, is amended by revising subparagraph (a)(10)(B.2) and adding a new
206 subparagraph to read as follows:

207 "(B.2) 'Dangerous sexual offense' with respect to convictions occurring ~~after June 30, 2017 between July 1, 2017, and June 30, 2019~~, means any criminal offense,
208 or the attempt to commit any criminal offense, under Title 16 as specified in this
209 subparagraph or any offense under federal law or the laws of another state or territory
210 of the United States which consists of the same or similar elements of the following
211 offenses:

- 213 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
214 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
215 is less than 14 years of age, except by a parent;
216 (iii) Trafficking an individual for sexual servitude in violation of Code
217 Section 16-5-46;
218 (iv) Rape in violation of Code Section 16-6-1;
219 (v) Sodomy in violation of Code Section 16-6-2;
220 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
221 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
222 of the offense is 21 years of age or older;
223 (viii) Child molestation in violation of Code Section 16-6-4;
224 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
225 person was convicted of a misdemeanor offense;
226 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
227 (xi) Sexual assault against persons in custody in violation of Code Section 16-6-5.1;
228 (xii) Incest in violation of Code Section 16-6-22;
229 (xiii) A second conviction for sexual battery in violation of Code Section 16-6-22.1;
230 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
231 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
232 (xvi) Electronically furnishing obscene material to minors in violation of Code
233 Section 16-12-100.1;
234 (xvii) Computer pornography and child exploitation in violation of Code
235 Section 16-12-100.2;
236 (xviii) Obscene telephone contact in violation of Code Section 16-12-100.3; or
237 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
238 minor or an attempt to commit a sexual offense against a victim who is a minor.

239 (B.3) 'Dangerous sexual offense' with respect to convictions occurring after
240 June 30, 2019, means any criminal offense, or the attempt to commit any criminal
241 offense, under Title 16 as specified in this subparagraph or any offense under federal
242 law or the laws of another state or territory of the United States which consists of the
243 same or similar elements of the following offenses:

- 244 (i) Aggravated assault with the intent to rape in violation of Code Section 16-5-21;
- 245 (ii) Kidnapping in violation of Code Section 16-5-40 which involves a victim who
246 is less than 14 years of age, except by a parent;
- 247 (iii) Trafficking an individual for sexual servitude in violation of Code
248 Section 16-5-46;
- 249 (iv) Rape in violation of Code Section 16-6-1;
- 250 (v) Sodomy in violation of Code Section 16-6-2;
- 251 (vi) Aggravated sodomy in violation of Code Section 16-6-2;
- 252 (vii) Statutory rape in violation of Code Section 16-6-3, if the individual convicted
253 of the offense is 21 years of age or older;
- 254 (viii) Child molestation in violation of Code Section 16-6-4;
- 255 (ix) Aggravated child molestation in violation of Code Section 16-6-4, unless the
256 person was convicted of a misdemeanor offense;
- 257 (x) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
- 258 (xi) Improper sexual contact by employee or agent in the first or second degree in
259 violation of Code Section 16-6-5.1, unless the punishment imposed was not subject
260 to Code Section 17-10-6.2;
- 261 (xii) Incest in violation of Code Section 16-6-22;
- 262 (xiii) A second or subsequent conviction for sexual battery in violation of Code
263 Section 16-6-22.1;
- 264 (xiv) Aggravated sexual battery in violation of Code Section 16-6-22.2;
- 265 (xv) Sexual exploitation of children in violation of Code Section 16-12-100;
- 266 (xvi) Electronically furnishing obscene material to minors in violation of Code
267 Section 16-12-100.1;
- 268 (xvii) Computer pornography and child exploitation in violation of Code
269 Section 16-12-100.2;
- 270 (xviii) A second or subsequent conviction for obscene telephone contact in violation
271 of Code Section 16-12-100.3; or
- 272 (xix) Any conduct which, by its nature, is a sexual offense against a victim who is a
273 minor or an attempt to commit a sexual offense against a victim who is a minor."

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SECTION 6.

275 Code Section 42-5-56 of the Official Code of Georgia Annotated, relating to immunity from
276 liability of department, agency, or child advocacy center, is amended by revising
277 subsection (a) as follows:

278 "(a) As used in this Code section, the term 'sexual offense' means a violation of Code
279 Section 16-6-1, relating to the offense of rape; Code Section 16-6-2, relating to the offenses
280 of sodomy and aggravated sodomy; Code Section 16-6-5.1, relating to the offense of ~~sexual~~
281 ~~assault against a person in custody~~ improper sexual contact by employee or agent; Code
282 Section 16-6-22, relating to the offense of incest; or Code Section 16-6-22.2, relating to the
283 offense of aggravated sexual battery, when the victim was under 18 years of age at the time
284 of the commission of any such offense; or a violation of Code Section 16-6-3, relating to
285 the offense of statutory rape; Code Section 16-6-4, relating to the offenses of child
286 molestation and aggravated child molestation; or Code Section 16-6-5, relating to the
287 offense of enticing a child for indecent purposes, when the victim was under 16 years of
288 age at the time of the commission of any such offense."

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SECTION 7.

290 Code Section 49-2-14.1 of the Official Code of Georgia Annotated, relating to definitions
291 and records check requirement for licensing certain facilities, is amended by revising
292 subparagraph (a)(2)(J) as follows:

293 "(J) A violation of Code Section 16-6-5.1, relating to ~~sexual assault against persons in~~
294 ~~custody, detained persons, or patients in hospitals or other institutions~~ improper sexual
295 contact by employee or agent;"

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SECTION 8.

297 Code Section 49-2-14.1 of the Official Code of Georgia Annotated, relating to definitions
298 and records check requirement for licensing certain facilities, is amended by revising
299 subparagraph (a)(2)(J) as follows:

300 "(J) A violation of Code Section 16-6-5.1, relating to ~~sexual assault against persons in~~
301 ~~custody, detained persons, or patients in hospitals or other institutions~~ improper sexual
302 contact by employee or agent;"

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SECTION 9.

304 This Act shall become effective on July 1, 2019; provided, however, that Section 8 of this
305 Act shall become effective October 1, 2019.

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SECTION 10.

307 All laws and parts of laws in conflict with this Act are repealed.